

BEFORE THE  
**Communications Commission**  
WASHINGTON, D. C. 20554

In the Matter of )  
 )  
Implementation of the Satellite ) MB Docket No. 05-49  
Home Viewer Extension and )  
Reauthorization Act of 2004 )  
 )  
Implementation of Section 340 of )  
the Communications Act )

TO: Honorable Marlene H. Dortch  
Secretary

ATTN: The Commission

COMMENTS OF  
WITHERS BROADCASTING COMPANY OF WEST VIRGINIA

Withers Broadcasting Company of West Virginia,  
licensee of Television Broadcast Station WDTV, Weston, West  
Virginia (Withers or WDTV), by its attorney, hereby  
respectfully submits its Comments in response to the **Notice  
of Proposed Rulemaking**, FCC 05-24, released February 7,  
2005. In so doing, the following is shown:

1. Withers is concerned about the Commission's perpetuation of the arbitrary, capricious and irrational "Significantly Viewed Stations" table which was adopted in Appendix B to the **Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order**, FCC 72-530, 36 FCC 2d 326, 25 RR 2d 1501 (1972).

2. Said table was developed from "1971 American Research Bureau Surveys". American Research Bureau (later known as ARBITRON) has since discontinued the conduct of regular television ratings surveys. It was never clear how the surveys were conducted. Glaring errors were made in the table, such as, for example, the finding that WNEW-TV, Channel 5, New York City, was "significantly viewed off air" in Chemung County, New York (where Elmira is located), despite that county being almost 200 highway miles from New York City and beyond the Catskill Mountains.

3. In the case of WDTV, its Grade B contour encompasses all of 19 counties in West Virginia, and substantially all of 5 counties in West Virginia and one county each in the states of Ohio and Pennsylvania (see Exhibit A).

4. However, the significantly viewed list only finds that WDTV is "significantly viewed" in only 17 of those 19 counties wholly-encompassed by its Grade B contour. One of those counties where WDTV is not shown as "significantly viewed" is Monongalia, where Morgantown is the county seat. Morgantown is the biggest city in WDTV's coverage area; WDTV covers local news, sports, weather and public affairs there and has viewership and advertisers there. In fact, WDTV employs a full-time news person who lives in

Monongalia County, who is equipped with a station vehicle, camera, editing equipment and a scanner, and is tasked with reporting news in Monongalia County on a daily basis.

5. To demonstrate that the "significantly viewed" table is flawed in northern West Virginia, consider that WDTV's main competitor, WBOY-TV, Channel 12, Clarksburg, West Virginia, is not listed in the "significantly viewed table" in two counties where its transmitter site is closer than the WDTV transmitter site: Preston and Tyler. WBOY-TV's transmitter site and that of WDTV are roughly equidistant to Pleasants County; WDTV is credited in the list as significantly viewed in this county, while WBOY-TV is not. Further, WVFX (originally WLYJ), Channel 46, Clarksburg, West Virginia, which began operation on February 8, 1981 and whose predicted Grade B contour includes all or substantially all of at least 10 counties in northern West Virginia, is not listed at all in the "significantly viewed table".

6. The solution to this problem is for the FCC to amend its "significantly viewed" table to include (1) all counties wholly encompassed by the predicted Grade B signal of a television broadcast station and (2) all counties where at least 80 percent of the land area is encompassed by the predicted Grade B signal of a television broadcast

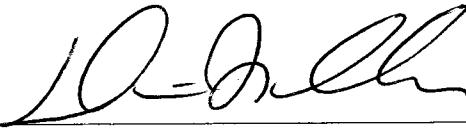
station. This solution would overcome the flawed 1972 significantly viewed table, which was both based on flawed ratings data and which failed to take into consideration the substantial numbers of UHF Television Stations which signed on in the 25 year period between 1972-1997, which have altered viewing and ratings patterns.

7. In the alternative, WDTV seeks that the Commission amend its television "significantly viewed" list to show that WDTV is significantly viewed in Monongalia and Wirt Counties, West Virginia, 100% of the land area of which is encompassed by the WDTV predicted Grade B contour.

8. This result serves the public interest by allowing cable and DBS customers to be able to receive from their service providers the terrestrial broadcast signals which are available off-the-air in their locales, and is in accord with all statutory mandates from Congress in this area.

Respectfully submitted,

**WITHERS BROADCASTING COMPANY  
OF WEST VIRGINIA**

By   
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Its Attorney

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DATED: April 8, 2005

**EXHIBIT A**

WDTV's coverage contour map is appended hereto.

The following counties are wholly within the WDTV

Grade B contour:

1. Barbour, WV
2. Braxton, WV
3. Calhoun, WV
4. Doddridge, WV
5. Gilmer, WV
6. Harrison, WV
7. Lewis, WV
8. Marion, WV
9. Monongalia, WV
10. Pleasants, WV
11. Randolph, WV
12. Ritchie, WV
13. Taylor, WV
14. Tucker, WV
15. Tyler, WV
16. Upshur, WV
17. Webster, WV
18. Wirt, WV
19. Wetzel, WV

At least 80% of the land area of the following  
counties is within the WDTV Grade B contour:

1. Monroe, OH
2. Greene, PA
3. Clay, WV
4. Marshall, WV
5. Preston, WV
6. Roane, WV
7. Wood, WV

The following counties are currently assigned by the Nielsen ratings organization to the "Clarksburg-Weston DMA":

1. Barbour, WV
2. Doddridge, WV
3. Gilmer, WV
4. Harrison, WV
5. Lewis, WV
6. Marion, WV
7. Randolph, WV
8. Ritchie, WV
9. Taylor, WV
10. Tucker, WV
11. Upshur, WV
12. Webster, WV

The following is a comparison of "significantly viewed" status in the counties served by WDTV and its in-market VHF competitor, WBOY-TV, Channel 12, Clarksburg, WV:

	<u>WDTV</u>	<u>WBOY-TV</u>
Barbour, WV	Yes	Yes
Braxton, WV	Yes	Yes
Calhoun, WV	Yes	No
Clay, WV	No	No
Doddridge, WV	Yes	Yes
Gilmer, WV	Yes	Yes
Harrison, WV	Yes	Yes
Lewis, WV	Yes	Yes
Marion, WV	Yes	Yes
Marshall, WV	No	No
Monongalia, WV	No	Yes
Pleasants, WV	Yes	No
Preston, WV	Yes	No
Randolph, WV	Yes	Yes
Roane, WV	No	No
Ritchie, WV	Yes	Yes
Taylor, WV	Yes	Yes
Tucker, WV	Yes	Yes
Tyler, WV	Yes	No
Upshur, WV	Yes	Yes
Webster, WV	Yes	No
Wirt, WV	No	No
Wetzel, WV	No	No
Wood, WV	No	No
Monroe, OH	No	No
Greene, PA	No	No



## West Virginia—Clarksburg-Weston

**WDTV**

Ch. 5

**Network Service:** CBS.

**Licensee:** W. Russell Withers Jr., Box 480, Bridgeport, WV 26330.

**Studio:** 5 Television Dr., Bridgeport, WV 26330.

**Mailing Address:** Box 480, Bridgeport, WV 26330.

**Telephone:** 304-623-5555. **Fax:** 304-842-7501.

**Technical Facilities:** Channel No. 5 (76-82 MHz). Authorized power: 100-kw visual, 20-kw aural. Antenna: 884-ft. above av. terrain, 505-ft. above ground, 2165-ft. above sea level.

Latitude 39° 04' 27"  
Longitude 80° 25' 28"

**Transmitter:** Television Park, Fisher Mountain, U.S. Rte. 19, Weston, WV.

**Satellite Earth Stations:** ADM, 6-meter C-band; AFC, 3.3-meter Ku-band; Scientific-Atlanta, 4.6-meter C-band; Scientific-Atlanta, 7-meter C-band; Automation Techniques, Chapparral, General Instrument, M/A-Corn, Scientific-Atlanta receivers.

**News Service:** AP.

**Ownership:** W. Russell Withers Jr. (Group Owner).

**Began Operation:** June 22, 1960. Sale to present owner by Broadcasting Industries of West Virginia approved by FCC April 5, 1973. Transfer of control to William A. Meehan, Receiver, from Broadcast Industries of West Virginia approved June 30, 1971. Sale to Broadcast Industries (formerly Medallion Pictures) by J. Patrick Beacom, Thomas P. Johnson & George W. Eby approved August 24, 1966 (Television Digest, Vol. 6:34, 35).

**Represented (sales):** Katz Continental Television.

**Represented (legal):** Baraff, Koerner, Olender & Hochberg, P.C.

**Personnel:**

**Mike Smith**, General Manager.  
**Nick Pellegrin**, Program Director.  
**Jeff Schrock**, Promotion Director.  
**Maurice E. Heskett**, Chief Engineer.



**WDTV** BPCT-2310 Granted 11/4/59 © American Map Corp., No. 14244

**Highest 30 Sec. Rate:** \$500.

**City of License:** Weston. **DMA:** Clarksburg-Weston. **Rank:** 162.

Circulation ©1995 Nielsen. Coverage based on Nielsen study.

	Cable TV Households	Non-cable TV Households	Total TV Households
<b>Estimated Station Totals*</b>	431,850	190,410	622,260
<b>Average Weekly Circulation (1995)</b>	82,131	36,593	133,488
<b>Average Daily Circulation (1995)</b>			78,039

\*Estimated station totals are sums of the Nielsen TV and Cable TV household estimates for each county in which the station registers viewing as per the Nielsen Survey Methods.